

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-108133-21

Date:

September 21, 2021

Legend

Distributing =

Distributing 1 =

Distributing 2 =

Distributing 3 =

Controlled =

Distributing Class A =

Distributing Class B =

Distributing Class C =

Controlled Class A =

| | |
|----------------------|---|
| Controlled Class B | = |
| Business A | = |
| Business B | = |
| Business C | = |
| Domestic Segment | = |
| Foreign Segment | = |
| State X | = |
| State Y | = |
| <u>a</u> | = |
| <u>b</u> | = |
| <u>c</u> | = |
| <u>d</u> | = |
| <u>e</u> | = |
| <u>f</u> | = |
| <u>g</u> | = |
| <u>h</u> | = |
| <u>i</u> | = |
| <u>i</u> | = |
| <u>k</u> | = |
| <u>l</u> | = |
| <u>m</u> | = |
| Commercial Agreement | = |

Dear _____ :

This letter responds to your letter dated April 12, 2021, as supplemented by subsequent submissions, requesting rulings on certain U.S. federal income tax consequences of a series of proposed transactions (collectively, the "Proposed Transaction").

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding one or more "Covered Transactions" under section 355 of the Internal Revenue Code (the "Code") and pursuant to section 6.03(2) of Rev. Proc. 2021-1, 2021-1 I.R.B. 1, regarding one or more significant issues under section 355 of the Code. This office expresses no opinion as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This office has made no determination regarding whether any of the Distributions (as defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation, or any predecessor or successor of the distributing corporation or the controlled corporation, within the meaning of Treas. Reg. § 1.355-8 (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing, a State X publicly traded corporation, is the ultimate parent of a worldwide group that includes corporations, entities disregarded for U.S. federal income tax purposes from their sole regarded owner under Treas. Reg. § 301.7701-3 (each, a "DRE"), and partnerships for U.S. federal income tax purposes (the "Distributing Group"). Distributing is also the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return (the "Distributing Consolidated Group"). The Distributing Group's business operations consist of Business A, Business B, and Business C. Business B consists of Domestic Segment and Foreign Segment. Distributing has three classes of common stock outstanding: (i) Distributing Class A, (ii) Distributing Class B, and (iii) Distributing Class C.

Distributing owns all the stock of Distributing 3, a State X corporation.

Distributing 3 owns all the stock of Distributing 2, a State X corporation.

Distributing 2 owns all the stock of Distributing 1, a State Y corporation. Distributing 2 also owns, directly and indirectly, the stock of a number of domestic and foreign corporations, interests in a number of partnerships, and DREs (the “Distributing 2 Group”).

Distributing 1 owns, directly and indirectly, including through DREs, all of the Controlled Class B common stock and approximately a shares of Controlled Class A common stock (collectively, the “Distributing Group Controlled Shares”) of Controlled, a State X corporation. The Distributing Group Controlled Shares reflect approximately (i) b percent of the total Controlled common stock outstanding and (ii) c percent of the voting power of all Controlled common stock outstanding. The Controlled Class A common stock is publicly traded with approximately d shares held by shareholders other than Distributing 1 (such shareholders, the “Controlled Public Shareholders”). In addition, Distributing 1 owns, directly and indirectly, the stock of a number of domestic and foreign corporations, interests in a number of partnerships, and DREs (the “Distributing 1 Group”).

Controlled owns, directly and indirectly, the stock of a number of domestic and foreign corporations, interests in a number of partnerships, and DREs (the “Controlled Group”).

Distributing 1 is engaged directly in Domestic Segment and the Controlled Group is engaged in Business C. Financial information has been received indicating that Domestic Segment and Business C have had gross receipts and operating expenses representing the active conduct of a trade or business for at least the past five years.

Proposed Transaction

For what are represented to be valid corporate business purposes (the “Corporate Business Purposes”), the Distributing Group proposes to engage in the following transactions, some of which have already been consummated, to separate Controlled from the Distributing Group—*i.e.*, the Proposed Transaction:

1. Controlled will borrow approximately e from third-party lenders (the “Controlled Borrowing”), all of which will occur before the Controlled Cash Distribution (defined below).
2. Distributing 1 will distribute all the Distributing Group Controlled Shares to Distributing 2 (“Internal Distribution 1”).
3. Controlled will distribute approximately f to g pro rata to Distributing 2 and the Controlled Public Shareholders (the “Controlled Cash Distribution”).

4. Distributing 2 will use existing cash on hand and the cash from the Controlled Cash Distribution to repay approximately f to g of third-party debt (the “Distributing 2 Debt Repayment”). The Distributing 2 Debt Repayment may occur after the External Distribution (defined below).
5. Distributing 2 will distribute all the Distributing Group Controlled Shares to Distributing 3 (“Internal Distribution 2”).
6. Distributing 3 will distribute all the Distributing Group Controlled Shares to Distributing (“Internal Distribution 3”).
7. Distributing will distribute all the Distributing Group Controlled Shares to its shareholders pro rata (the “External Distribution” and, together with Internal Distribution 1, Internal Distribution 2, and Internal Distribution 3, the “Distributions”). Distributing shareholders that otherwise would be entitled to receive fractional shares of Controlled in the External Distribution will receive cash in lieu thereof. A distribution agent will aggregate fractional shares into whole shares, sell the whole shares in the open market at prevailing market prices and distribute the proceeds to Distributing’s shareholders otherwise entitled to such interest (the “Fractional Share Sales”).
8. Immediately after the External Distribution, each share of Controlled Class B common stock will automatically convert into one share of Controlled Class A common stock (the “Controlled Recapitalization”).

Continuing Arrangements

In connection with the Proposed Transaction, the Distributing Group and Controlled have entered into and will enter into continuing commercial arrangements, including a Commercial Agreement, and other customary agreements, including a separation and distribution agreement, transition services agreement, and tax matters agreement (the “Continuing Arrangements”). The Commercial Agreement will govern certain continuing business relationships between the Distributing Group and Controlled. The Commercial Agreement has an initial h-year term with automatic i-year extensions, which either party can terminate. All of the Continuing Arrangements will be based on arm’s length terms and conditions, including arm’s length pricing, except with respect to certain payments made pursuant to the transition services agreement that may be priced at cost or cost-plus for up to j months. All such relationships are not inconsistent with the overall separation of Controlled from the Distributing Group.

Board Overlap

Following the Proposed Transaction, Distributing’s board of directors will consist of k members and Controlled’s board of directors will consist of l members. It is expected that m directors of Distributing will also be members of the board of directors

of Controlled (the “Overlapping Directors”). The Overlapping Directors are expected to give both corporations access to the experience base of such directors.

Representations

Distributing has made the following representations with respect to the Proposed Transaction.

Internal Distribution 1

With respect to Internal Distribution 1, except as set forth below, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

1. Distributing has made the following alternative representations: Representations 3(a); 8(b); 11(a); 15(b); 31(a); 41(a).
2. Distributing has not made the following representations, which do not apply to Internal Distribution 1: Representations 7; 17; 18; 19; 20; 22; 24; 25; 26; 35; 39.
3. Distributing has not made the following representation, but provided the required explanation: Representation 40.
4. Distributing has made the following modified representations:

Representation 32: Except for amounts payable under the Continuing Arrangements or liabilities arising in the ordinary course of business, no intercorporate debt will exist between Distributing 1 and Controlled (and their respective affiliates, as applicable) at the time of, or subsequent to, Internal Distribution 1.

Representation 33: Except with respect to certain payments made pursuant to the transition services agreement, payments made in connection with all continuing transactions, if any, between Distributing 1 and Controlled after Internal Distribution 1 will be for fair market value based on arm’s-length terms.

Representation 34: Distributing 1 and Controlled each will pay its own expenses, if any, incurred in connection with Internal Distribution 1 except that Distributing and its affiliates may pay certain corporate-level expenses that are solely and directly related (within the meaning of Rev. Rul. 73-54, 1973-1 C.B. 187) to Internal Distribution 1 (such as legal, accounting, and other advisory fees and administrative expenses incurred in connection with Internal Distribution 1).

Representation 46: Controlled will not issue stock or securities to a person other than Distributing 1 in anticipation of Internal Distribution 1, other than potentially pursuant to the Controlled Borrowing.

Internal Distribution 2

With respect to Internal Distribution 2, except as set forth below, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

5. Distributing has made the following alternative representations: Representations 3(a); 8(b); 11(a); 15(a); 31(a); 41(a).
6. Distributing has not made the following representations, which do not apply to Internal Distribution 2: Representations 7; 17; 18; 19; 20; 22; 24; 25; 26; 35; 39.
7. Distributing has not made the following representation, but provided the required explanation: Representation 40.
8. Distributing has made the following modified representations:

Representation 32: Except for amounts payable under the Continuing Arrangements or liabilities arising in the ordinary course of business, no intercorporate debt will exist between Distributing 2 and Controlled (and their respective affiliates, as applicable) at the time of, or subsequent to, Internal Distribution 2.

Representation 33: Except with respect to certain payments made pursuant to the transition services agreement, payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled after Internal Distribution 2 will be for fair market value based on arm's-length terms.

Representation 34: Distributing 2 and Controlled each will pay its own expenses, if any, incurred in connection with Internal Distribution 2 except that Distributing and its affiliates may pay certain corporate-level expenses that are solely and directly related (within the meaning of Rev. Rul. 73-54, 1973-1 C.B. 187) to Internal Distribution 2 (such as legal, accounting, and other advisory fees and administrative expenses incurred in connection with Internal Distribution 2).

Representation 46: Controlled will not issue stock or securities to a person other than Distributing 2 in anticipation of Internal Distribution 2, other than potentially pursuant to the Controlled Borrowing.

Internal Distribution 3

With respect to Internal Distribution 3, except as set forth below, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

9. Distributing has made the following alternative representations: Representations 3(a); 8(b); 11(a); 15(a); 31(a); 41(a).
10. Distributing has not made the following representations, which do not apply to Internal Distribution 3: Representations 7; 17; 18; 19; 20; 22; 24; 25; 26; 35; 39.

11. Distributing has not made the following representation, but provided the required explanation: Representation 40.
12. Distributing has made the following modified representations:

Representation 32: Except for amounts payable under the Continuing Arrangements or liabilities arising in the ordinary course of business, no intercorporate debt will exist between Distributing 3 and Controlled (and their respective affiliates, as applicable) at the time of, or subsequent to, Internal Distribution 3.

Representation 33: Except with respect to certain payments made pursuant to the transition services agreement, payments made in connection with all continuing transactions, if any, between Distributing 3 and Controlled after Internal Distribution 3 will be for fair market value based on arm's-length terms.

Representation 34: Distributing 3 and Controlled each will pay its own expenses, if any, incurred in connection with Internal Distribution 3 except that Distributing and its affiliates may pay certain corporate-level expenses that are solely and directly related (within the meaning of Rev. Rul. 73-54, 1973-1 C.B. 187) to Internal Distribution 3 (such as legal, accounting, and other advisory fees and administrative expenses incurred in connection with Internal Distribution 3).

External Distribution

With respect to the External Distribution, except as set forth below, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

13. Distributing has made the following alternative representations: Representations 3(a); 8(b); 11(a); 15(a); 31(a); 41(a).
14. Distributing has not made the following representations, which do not apply to the External Distribution: Representations 7; 17; 18; 19; 20; 22; 24; 25; 26; 35; 39; 40.
15. Distributing has made the following modified representations:

Representation 32: Except for amounts payable under the Continuing Arrangements or liabilities arising in the ordinary course of business, no intercorporate debt will exist between Distributing and Controlled (and their respective affiliates, as applicable) at the time of, or subsequent to, the External Distribution

Representation 33: Except with respect to certain payments made pursuant to the transition services agreement, payments made in connection with all continuing transactions, if any, between Distributing and Controlled after the External Distribution will be for fair market value based on arm's-length terms.

Representation 34: Distributing and Controlled each will pay its own expenses, if any, incurred in connection with the External Distribution except that Distributing and its affiliates may pay certain corporate-level expenses that are solely and directly related (within the meaning of Rev. Rul. 73-54, 1973-1 C.B. 187) to the External Distribution (such as legal, accounting, and other advisory fees and administrative expenses incurred in connection with the External Distribution).

Representation 35: The payment of cash in lieu of fractional shares of Controlled is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. The fractional share interests of each Distributing shareholder will be aggregated and no Distributing shareholder of record will receive cash in an amount equal to or greater than the value of one full share of Controlled (with the possible exception of shareholders who hold Distributing stock in multiple accounts or with multiple brokers).

Additional Representations

With respect to the Proposed Transaction, Distributing has made the following additional representations:

16. At no point during the Proposed Transaction will a member of the Distributing Group that is distributing the stock of Controlled pursuant to the Proposed Transaction have an excess loss account (within the meaning of Treas. Reg. § 1.1502-19) in the stock of Controlled.
17. Distributing 2 will use the proceeds from the Controlled Cash Distribution to repay indebtedness issued to third parties.
18. Distributing 2 will not be obligated to contribute the proceeds of the Controlled Cash Distribution to Distributing 1 and will have no plan or intention to contribute the proceeds of the Controlled Cash Distribution to Distributing 1.
19. Controlled will be the sole obligor on the Controlled Borrowing, and after the External Distribution, neither Distributing 1 nor any member of the Distributing Group will be a guarantor on the Controlled Borrowing.

Rulings

Based solely on the information submitted and the representations made, we rule as follows with respect to the Proposed Transaction:

Internal Distribution 1

1. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 upon receipt of the Controlled stock in Internal Distribution 1 (section 355(a)).

2. No gain or loss will be recognized by Distributing 1 on the distribution of Controlled's stock in Internal Distribution 1 (section 355(c)(1)).
3. The aggregate basis of the Distributing 1 stock and the Controlled stock in the hands of Distributing 2 immediately after Internal Distribution 1 will be the same as Distributing 2's basis in the Distributing 1 stock immediately before Internal Distribution 1, allocated between the Distributing 1 stock and the Controlled stock in proportion to the fair market value of each immediately following Internal Distribution 1 (section 358(b)(2) and (c); Treas. Reg. § 1.358-2(a)(2)(iv) and (v)).
4. The holding period of the Controlled stock received by Distributing 2 in Internal Distribution 1 will include the holding period of the Distributing 1 stock held by Distributing 2 with respect to which Internal Distribution 1 will be made, provided that such Distributing 1 stock is held as a capital asset on the date of Internal Distribution 1 (section 1223(1)).
5. Earnings and profits, if any, will be allocated between Distributing 1 and Controlled in accordance with section 312(h), Treas. Reg. § 1.312-10(b), and Treas. Reg. § 1.1502-33(f)(2).

Internal Distribution 2

6. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 3 upon receipt of the Controlled stock in Internal Distribution 2 (section 355(a)).
7. No gain or loss will be recognized by Distributing 2 on the distribution of Controlled's stock in Internal Distribution 2 (section 355(c)(1)).
8. The aggregate basis of the Distributing 2 stock and the Controlled stock in the hands of Distributing 3 immediately after Internal Distribution 2 will be the same as Distributing 3's basis in the Distributing 2 stock immediately before Internal Distribution 2, allocated between the Distributing 2 stock and the Controlled stock in proportion to the fair market value of each immediately following Internal Distribution 2 (section 358(b)(2) and (c); Treas. Reg. § 1.358-2(a)(2)(iv) and (v)).
9. The holding period of the Controlled stock received by Distributing 3 in Internal Distribution 2 will include the holding period of the Distributing 2 stock held by Distributing 3 with respect to which Internal Distribution 2 will be made, provided that such Distributing 2 stock is held as a capital asset on the date of Internal Distribution 2 (section 1223(1)).
10. Earnings and profits, if any, will be allocated between Distributing 2 and Controlled in accordance with section 312(h), Treas. Reg. § 1.312-10(b), and Treas. Reg. § 1.1502-33(f)(2).

Internal Distribution 3

11. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing upon receipt of the Controlled stock in Internal Distribution 3 (section 355(a)).
12. No gain or loss will be recognized by Distributing 3 on the distribution of Controlled's stock in Internal Distribution 3 (section 355(c)(1)).
13. The aggregate basis of the Distributing 3 stock and the Controlled stock in the hands of Distributing immediately after Internal Distribution 3 will be the same as Distributing's basis in the Distributing 3 stock immediately before Internal Distribution 3, allocated between the Distributing 3 stock and the Controlled stock in proportion to the fair market value of each immediately following Internal Distribution 3 (section 358(b)(2) and (c); Treas. Reg. § 1.358-2(a)(2)(iv) and (v)).
14. The holding period of the Controlled stock received by Distributing in Internal Distribution 3 will include the holding period of the Distributing 3 stock held by Distributing with respect to which Internal Distribution 3 will be made, provided that such Distributing 3 stock is held as a capital asset on the date of Internal Distribution 3 (section 1223(1)).
15. Earnings and profits, if any, will be allocated between Distributing 3 and Controlled in accordance with section 312(h), Treas. Reg. § 1.312-10(b), and Treas. Reg. § 1.1502-33(f)(2).

External Distribution

16. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing shareholders upon receipt of the Controlled stock in the External Distribution (section 355(a)).
17. No gain or loss will be recognized by Distributing on the distribution of Controlled's stock in the External Distribution (section 355(c)(1)).
18. The aggregate basis of the Distributing stock and the Controlled stock in the hands of Distributing shareholders after the External Distribution will be the same as such shareholders' basis in the Distributing stock immediately before the External Distribution, allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each immediately following the External Distribution (section 358(b)(2) and (c); Treas. Reg. § 1.358-2(a)(2)(iv) and (v)).
19. The holding period of the Controlled stock received by Distributing shareholders in the external Distribution will include the holding period of the Distributing stock held by such Distributing shareholder with respect to which the External Distribution will be made, provided that such Distributing stock is held as a capital asset on the date of the External Distribution (section 1223(1)).

20. Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h), Treas. Reg. § 1.312-10(b), and Treas. Reg. § 1.1502-33(e)(3).
21. The receipt by Distributing shareholders of cash in lieu of fractional shares of Controlled stock will be treated for U.S. federal income tax purposes as if the fractional shares had been distributed to the Distributing shareholders as part of the External Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss) recognized (determined using the basis allocated to the fractional shares in Ruling 18), if any, will be treated as capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder (Section 1001). Such gain (or loss) will be short-term or long-term capital gain (or loss) (determined using the holding period provided in Ruling 19).

The Tax Matters Agreement

22. Any payments made between Distributing or any of its affiliates and Controlled or any of its affiliates under the tax matters agreement that (i) have arisen or will arise for a taxable period ending on or before the date of Internal Distribution 1, or for a taxable period beginning before but ending after the date of Internal Distribution 1, and (ii) will not have become fixed and ascertainable until after Internal Distribution 1, will be treated as occurring immediately before the date of Internal Distribution 1. See *Arrowsmith v. Comm'r*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

The Controlled Cash Distribution

23. The Controlled Cash Distribution will be treated for U.S. federal income tax purposes as occurring after Internal Distribution 1 and before Internal Distribution 2.
24. For U.S. federal income tax purposes, the Controlled Cash Distribution will be treated as a distribution by Controlled to Distributing 2 and the Controlled Public Shareholders to which section 301 applies. The portion of the Cash Distribution received by Distributing 2 will be treated as an intercompany distribution to which Treas. Reg. § 1.1502-13(f)(2) applies.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Procedural Statements

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Richard M. Heinecke

Richard M. Heinecke
Branch Chief, Branch 5
Office of Associate Chief Counsel (Corporate)

cc: